

JONES DAY

222 EAST 41ST STREET • NEW YORK, NEW YORK 10017-6702
TELEPHONE: 212-326-3939 • FACSIMILE: 212-755-7306

Direct Number: (212) 326-3429
trgeremia@jonesday.com

JP003870
360353-600001

April 3, 2007

BY FACSIMILE

The Honorable Kimba M. Wood
United States District Court
for the Southern District of New York
120 Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, New York 10007-1312

Re: *Jericho Group, Ltd. v. Midtown Development, L.P.*, No. 07-CV-1792 (RCC) (DCF)

Dear Chief Judge Wood:

We are co-counsel, with Phillips Nizer LLP, to defendants in the above-captioned action, which had been assigned to Judge Casey. By letter dated April 2, Jericho has submitted a non-emergency motion for a remand to Your Honor, apparently in Your Honor's capacity as the Part I Judge. We write to inform the Court of Jericho's misuse of the Part I process and its failure to follow the Court's instructions in connection with the late Judge Casey's cases.

Upon Judge Casey's sudden death, the Court informed parties to wait for reassignment to another judge and that, in the meantime, any case-related inquiry should be "by letter to Judge Casey's chambers." Parties were told, "If you experience a legal emergency, you may contact the Part I Judge" and that, in the event of such an emergency, parties "should also notify Judge Casey's chambers by letter, to the attention of Judge Casey's law clerks." *See* Notice to Parties with Pending Cases Before Judge Casey, Mar. 28, 2007 (copy attached). (The Court sent a similar notice by e-mail on March 23.)

Jericho did not follow these instructions. On March 30, Jericho submitted this same non-emergency motion for a remand to Judge Baer, "as the sitting Part I Judge." (Copy attached.) Before Jericho made that motion, it had also apparently been making *ex parte* telephone calls to Your Honor's and Judge Casey's law clerks to seek assignment of a judge to its motion. *See id.* While Jericho's motion to remand this recently filed case to state court was due to be *filed* by April 2, *see* 28 U.S.C. § 1447(c), that does not mean Jericho had an urgent need to have a judge assigned to the motion, as its letter to Judge Baer suggested and as Jericho may have misrepresented in its *ex parte* telephone calls with Your Honor's and Judge Casey's chambers.

Judge Baer's chambers promptly informed Jericho that his assignment as a Part I Judge concluded as of March 30 (as Jericho could have confirmed for itself by checking the Court's website instead of calling chambers). Jericho has persisted in attempting to get its motion

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assigned to a Part I Judge, however. Jericho's April 2 letter to Your Honor states that Jericho has a purported need "to determine which Judge we should name in our motion papers as the Judge who would hear the motion." There is of course no such requirement. *See* Fed. R. Civ. P. 7(b). More importantly, that is *not* how the Court instructed parties to proceed. Parties were told to await reassignment, not to contact chambers by telephone, and to write a letter to Judge Casey's chambers if there was an emergency matter that required the attention of a Part I Judge. Jericho ignored *every one* of these instructions. In accordance with the Court's guidelines, Jericho could have, and should have, simply filed its motion and awaited reassignment.

Jericho's motion for a remand is also not, by any stretch, an "emergency matter" that requires a prompt hearing in Part I. *See* Rules for the Division of Business Among District Judge, Rule 5(b). Indeed, the motion will not be fully submitted until *after* the conclusion of Your Honor's assignment as the Part I Judge. Nor is there any urgency to deciding Jericho's motion. As Jericho expressly acknowledges in its motion papers, its complaint in this case re-asserts claims under New York state law and seeks "essentially the *same relief* . . . , based on the *same transaction*" that was at issue in an earlier action that Jericho brought in New York State Supreme Court in September 2004. *See* Docket No. 6, Affidavit of Herbert Rubin ¶ 6 (emphasis added). That earlier action has been *dismissed* by the Appellate Division, First Department, in an August 17, 2006 decision that unanimously reversed an order by Justice Ramos denying Midtown's motion to dismiss. *See id.* Ex. D. Justice Ramos's most recent order vacating the judgment in that now-dismissed action—and inviting Jericho to file a new action (which is this case) as an improper way of avoiding the preclusive effect of the Appellate Division's order—was promptly appealed by Midtown. That appeal has been perfected for the First Department's June Term and will not be argued until, at the earliest, May 15. The First Department's decision will control whether Jericho's new action may properly proceed. If the First Department re-affirms its earlier decision and re-orders a judgment of dismissal, this case seeking the "same relief" based on "the same transaction" will necessarily have to end. In these circumstances, there is no sound reason to proceed with Jericho's follow-on action until *after* the Appellate Division rules, and thus no urgency whatsoever to Jericho's motion for a remand.

Defendants wish to make clear that we have no objection to Your Honor ruling on Jericho's motion to remand, which we will show in our opposition is without merit and should be denied. But we respectfully submit that this non-emergency motion was not properly brought in Part I and that, in the interest of judicial economy and in accordance with the Court's guidelines, Jericho's remand motion should be decided by the Judge to whom this case is reassigned.

Respectfully submitted,



Todd R. Geremia

cc: Herbert Rubin, Esq. (by fax and e-mail)

**Attachments to April 3, 2007 Letter from Todd R. Geremia to The
Honorable Kimba M. Wood**

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**
500 PEARL STREET, NEW YORK, NY 10007

Notice to Parties with Pending Civil Cases Before Judge Casey

New York , NY--March 28, 2007--The Honorable Richard Conway Casey passed away unexpectedly on March 22. The case reassignment process will take some time. In the meantime, please be advised of the following:

- If you have an upcoming court appearance, you will be contacted by Judge Casey's chambers with additional information. You may be contacted via the Electronic Case Filing system if your case is an ECF case. Do not contact Chambers unless it is the day prior to your scheduled appearance and you have not yet received information about the status of your conference.
- Case-related inquiries may be directed by letter to Judge Casey's Chambers until you receive notice of reassignment. Mail letters to: Chambers of Hon. Richard C. Casey, Attn. Law Clerks, U.S. District Court, 500 Pearl Street, New York, NY 10007.
- If you experience a legal emergency, you may contact the Part I Judge, whose information is listed at http://www1.nysd.uscourts.gov/part1_crim.php. You should also notify Judge Casey's chambers by letter, to the attention of Judge Casey's law clerks (see address above). You should send an update by joint letter from the parties to Chambers after the Part I Judge has addressed your emergency.
- If your case has not yet been assigned to a United States Magistrate Judge for general pre-trial (includes scheduling, discovery, non-dispositive pretrial motions, and settlement), or specifically for settlement conferences, and any party is interested in such a referral, send a letter to Judge Casey's chambers, to the attention of Judge Casey's law clerks (see address above).
- Parties may also consent that a United States Magistrate Judge conduct all further proceedings in your action, including any trial and entry of final judgment. The consent form is available at: http://www1.nysd.uscourts.gov/forms/start_action/consmag.pdf.
- If you are interested in mediation, please review the Southern District of New York Local Civil Rule 83.12, and then send a joint letter to Judge Casey's chambers asking to be placed in the Court's mediation program (see address above). If you have questions about this program, you may contact Mediation Services for the Southern District of New York at (212) 805-0643.

HERZFELD & RUBIN, P.C.
ATTORNEYS AT LAW
40 WALL STREET
NEW YORK, N Y 10005-2349
TELEPHONE: (212) 471-8500
FAX: (212) 344-3333
WWW.HERZFELD-RUBIN.COM

March 30, 2007

Herbert Rubin

Direct Line: (212) 471-8510

Direct Fax: (212) 232-6610

hrubin@herzfeld-rubin.com

VIA TELECOPIER

Honorable Harold Baer, Jr.
United States District Judge
United States Courthouse
500 Pearl Street, Room 2230
New York, New York 10007

Re: Jericho Group, Ltd. v. Midtown Development, L.P.,
Index No. 07CV1792 (RCC) (DCF)

Dear Judge Baer:

This firm represents plaintiff in the above action, which was removed from the Supreme Court, New York County on March 1, 2007. The action was assigned to Judge Casey. Plaintiff is moving to remand the case to the State Court. In light of Judge Casey's death last week and the requirement that a remand motion be made within 30 days after removal, we communicated with Chief Judge Wood's chambers and Judge Casey's chambers and were advised that the motion should be submitted to Your Honor as the sitting Part 1 Judge.

We are serving and filing plaintiff's motion papers today, and are delivering a copy of this letter to defendants' counsel with the motion papers. In accordance with Your Honor's Individual Practices, we will submit courtesy copies of both sides' papers after the filing of plaintiff's reply papers.

Respectfully submitted,



Herbert Rubin

cc: Todd Geremia, Esq.
Jones Day
222 East 41st Street
New York, New York 10017

HERZFELD & RUBIN LLP
1925 CENTURY PARK EAST
LOS ANGELES, CALIFORNIA 90067-2783
TELEPHONE (310) 553-0451
FAX (310) 553-0648

CHASE KURSHAN HERZFELD & RUBIN, LLC
50 REGENT STREET, SUITE 508
LIVINGSTON, NEW JERSEY 07039-1617
TELEPHONE (973) 535-8840
FAX (973) 535-8841

RUBIN MEYER DORU & TRANDAFIR
SOCIETATE CIVILA DE AVOCATI
7, STRADA PUTUL CU PLOPI
BUCHAREST 1, ROMANIA
TELEPHONE (40) (21) 311-1460
FAX (40) (21) 311-1465

HERZFELD & RUBIN, P.C.

ATTORNEYS AT LAW
40 WALL STREET
NEW YORK, N Y 10005-2349

TELEPHONE: (212) 471-8500

FAX: (212) 344-3333

WWW.HERZFELD-RUBIN.COM

April 2, 2007

Herbert Rubin

Direct Line: (212) 471-8510

Direct Fax: (212) 232-6610

hrubin@herzfeld-rubin.com

VIA HAND DELIVERY

The Honorable Kimba M. Wood
Chief Judge
United States District Court
Southern District of New York
500 Pearl Street, Room 1610
New York, New York 10007

Re: Jericho Group, Ltd. v. Midtown Development, L.P.,
Index No. 07CV1792 (RCC)(DCF)

Dear Judge Wood:

This firm represents plaintiff in the above action, which was removed from the Supreme Court, New York County on March 1, 2007. The action was assigned to Judge Casey. I am writing pursuant to instruction from Your Honor's chambers this morning.

Plaintiff has moved to remand the case to the State Court. In light of Judge Casey's recent death and the requirement that a remand motion be made within 30 days after removal (i.e., by March 30, 2007) we called Your Honor's chambers on Tuesday, March 27, in your capacity as Chief Judge, to determine which Judge we should name in our motion papers as the Judge who would hear the motion. We were advised that the motion would probably be submitted to Judge Baer, as the Judge who was and would be sitting in Part 1 last week, but were told to call Judge Casey's chamber to confirm this. We called Judge Casey's chambers on the morning of March 28, and were advised that the motion should indeed be made returnable before Judge Baer. We thus identified him in our Notice of Motion and advised him by letter sent by fax on March 30 of our communications with the Court on this subject. A copy of that letter is enclosed. Our motion papers were served and filed the same day.

I received a call from Judge Baer's chambers this morning in which it was indicated that his assignment as Part 1 Judge did not extend to March 30, 2007. We called Your Honor's chambers this morning for guidance as to how to proceed and were told to send

HERZFELD & RUBIN LLP
1925 CENTURY PARK EAST
LOS ANGELES, CALIFORNIA 90067-2783
TELEPHONE (310) 553-0451
FAX (310) 553-0648

CHASE KURSHAN HERZFELD & RUBIN, LLC
50 REGENT STREET, SUITE 508
LIVINGSTON, NEW JERSEY 07039-1617
TELEPHONE (973) 535-8840
FAX (973) 535-8841

RUBIN MEYER DORU & TRANDAFIR
SOCIETATE CIVILA DE AVOCATI
7, STRADA PUTUL CU PLOPI
BUCHAREST 1, ROMANIA
TELEPHONE (40) (21) 311-1460
FAX (40) (21) 311-1465

HERZFELD & RUBIN, P.C.

The Honorable Kimba M. Wood
April 2, 2006
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this explanatory letter and courtesy copies of our motion papers to Your Honor. Copies of those papers are enclosed. We respectfully request that if Judge Baer is not the appropriate judge for this motion, that we be advised as to the judge to whom we should be sending courtesy copies of any further motion papers.

Respectfully yours,


Herbert Rubin

HR/eb

cc: (By Telecopier)
Todd R. Geremia, Esq.
Jones Day
222 East 41st Street
New York, New York 10017